

State of Wisconsin


LEGISLATIVE REFERENCE BUREAU


RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/05/2013

(Per: PJK)

Appendix A ... segment III

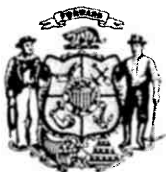
Appendix A  The drafting file for LRB 13-0016 (used to create 13-3081)
(Representative Kleefisch)

Appendix B  The drafting file for LRB 11-3501 (used to create 13-0016)
(Representative Kleefisch)

has been transferred to the drafting file for

2013 LRB-3081

(Representative Kleefisch)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0016/BQ
PJK:sac:rs

rmis run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Draft
(in 12-12)

regenerate ↓

1 AN ACT *to renumber* 767.531 (1), 767.531 (2), 767.531 (3) and 767.59 (1f) (c) 1.;
2 *to renumber and amend* 767.511 (1j), 767.511 (2) and 767.531 (intro.) (except
3 767.531 (title)); *to amend* 767.215 (1) (b), 767.215 (2m) (a) 2., 767.225 (1n) (b)
4 1., 767.511 (1) (a), 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511 (1n), 767.511
5 (2) (title), 767.513 (2), 767.55 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.57 (1m)
6 (intro.), 767.59 (1c) (a) (intro.), 767.59 (1c) (a) 1., 767.59 (1f) (b) (intro.), 767.59
7 (1f) (b) 4., 767.59 (1f) (c) (intro.), 767.59 (1f) (d), 767.59 (2) (a), 767.59 (2) (b),
8 767.80 (7), 767.813 (6) and 767.85 (2); *to repeal and recreate* 767.59 (1f) (a);
9 and *to create* 767.511 (1j) (a), 767.511 (1j) (b) 1., 767.511 (1j) (b) 2., 767.511 (1j)
10 (b) 2m., 767.511 (1j) (b) 2r., 767.511 (1j) (b) 3., 767.511 (1j) (b) 4., 767.511 (1j) (b)
11 5., 767.511 (1m) (bc), 767.511 (1p), 767.511 (1r), 767.511 (2) (b), 767.542, 767.59
12 (1f) (b) 5., 767.59 (1f) (bm) and 767.59 (2m) of the statutes; **relating to:**
13 ~~calculating and revising child support, allowing discovery to obtain information~~
14 ~~about the use of child support, prohibiting setting minimum or maximum~~
15 ~~support amounts, depositing excess support for use for extraordinary needs and~~

→ determining

- 1 postsecondary education, requiring family support not to exceed child support,
2 and granting rule-making authority. *insert RC*

Analysis by the Legislative Reference Bureau

(Note: This analysis has not been updated for the changes made to 2011 LRB-3501/2. An updated version will be included after all changes are finalized and approved.)

Under current law, in divorces, paternity actions, and other actions affecting the family in which there are minor children the court is required to order either or both parents to pay an amount that is reasonable or necessary to fulfill a duty to support a child. The court must generally determine child support payments by using the percentage standard set out in the Wisconsin Administrative Code (code) and established by the Department of Children and Families (DCF). The percentage standard is a percentage of the child support payer's monthly income available for support. The percentage that the child support payer must pay varies with the number of children to be supported. Under the percentage standard, a payer must pay 17 percent of his or her monthly income available for support for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Generally, the parent who has physical placement with a child for less time is ordered to pay child support to the other parent on the basis of the percentage standard.

including for → In addition to the percentage standard, the code provides special methods that the court may, but is not required to, use for calculating child support in special situations: ~~serial-family parents; shared-placement payers; split-placement payers; low-income payers; and high-income payers.~~ A serial-family parent is a parent who is already obligated to pay child support and who is later ordered to pay support for another child, from a later marriage or a paternity adjudication, for example. The amount of support that the person must pay under the later order may be calculated by first reducing the payer's monthly income available for support by the amount under the first child support order and then applying the percentage standard to that reduced income amount.

Shared-placement parents are parents who both have physical placement with a child for at least 25 percent of the time or 92 days a year and who are both ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child. For shared-placement parents, child support may be determined by multiplying each parent's income by the percentage standard, multiplying each of those resulting amounts by 150 percent, and then multiplying the resulting amount determined for each parent by the other parent's proportion of physical placement. The parent with the higher resulting amount pays to the other parent the difference between the amounts or the amount that would be determined by applying the percentage standard to his or her income, whichever is lower.

Split-placement parents are parents who have two or more children and each has placement with at least one but not all of the children. Under the code, child

support may be determined by multiplying each parent's income by the pro rata percentage standard that applies for the number of children placed with the other parent. (For example, if there are two children and each parent has physical placement with one child, the pro rata percentage standard is 12.5 percent, or one-half of the 25 percent that applies for two children under the percentage standard.) The parent who would be required to pay the higher amount pays the difference to the other parent.

For low-income payers and high-income payers, the court may determine child support by using a schedule of percentages that are different from the percentages in the percentage standard. Currently, a low-income payer is one with annual income available for support of \$16,200 or less. This amount, which is 150 percent of poverty, is adjusted based on federal poverty guidelines. The schedule of percentages is reduced for each income level in gradients of \$25 per monthly income amount. Currently, the percentages, depending on income level, range from 11.11 percent to 17 percent for one child and from 22.22 percent to 34 percent for five or more children. For high-income payers, child support may be determined by multiplying annual income available for support that is less than \$84,000 by the usual percentages of the percentage standard, income between \$84,000 and \$150,000 by a different schedule of percentages that are about 80 percent of the usual percentages, and income above \$150,000 by another schedule of percentages that are about 60 percent of the usual percentages. For example, for a payer with annual income available for support above \$150,000, child support for one child may be determined by multiplying the payer's monthly income under \$7,000 by 17 percent, multiplying the additional monthly income between \$7,000 and \$12,500 by 14 percent, multiplying the additional monthly income over \$12,500 by 10 percent, and adding together the amounts obtained.

The code provides that the court must determine a parent's monthly income that is available for child support by dividing by 12 the sum of the parent's gross annual income, or gross annual income modified for business expenses, the parent's annual imputed income based on earning capacity, and the parent's annual income imputed from assets. Under the code, the court may impute income to a payer if the court determines that the payer's income is less than his or her earning capacity or if the payer has unproductive assets or has diverted income into assets to avoid paying child support. For imputing income based on earning capacity, the court assesses the parent's education, training, previous work experience and income level, and the availability of work in or near the parent's community. Income imputation for unproductive assets involves multiplying the net value of the parent's assets by the current six-month treasury bill rate or another reasonable rate.

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill sets out a child support percentage standard in the statutes for actions affecting the family and specifies how a court must determine child support, including for revisions of existing child support orders. Under the bill, the court must determine the support obligation of each parent who has physical placement with a child for less than 75 percent of the time and order one or both parents to pay an amount for the support of the child. To calculate a parent's child support obligation, the parent's net monthly income is multiplied by a specified percentage. Under the bill, net monthly income is a parent's gross monthly income, determined in the manner provided in the code, less federal and state income tax that would be withheld, or that would be paid by a self-employed individual, based on the actual number of dependents that the individual or self-employed individual is legally entitled to claim on his or her income tax return. If a parent's net monthly income is \$7,000 or less (which equals \$84,000 or less of net annual income), his or her total net monthly income is multiplied by the same percentages as the percentage standard under the code: 17 percent for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for more than four children. However, if a parent's net monthly income exceeds \$7,000, his or her total net monthly income is multiplied by 14 percent for one child, 20 percent for two children, 23 percent for three children, 25 percent for four children, and 27 percent for more than four children, except that the court may not calculate a parent's child support obligation on any of the parent's net income that exceeds \$150,000 per year, annually adjusted in accordance with the consumer price index.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's monthly child support obligation, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for the child's health care coverage, health care expenses not covered by insurance, and child care expenses. Then, if both parents have physical placement with a child for more than 25 percent of the time, each parent's child support obligation, thus determined, is multiplied by the percentage of time that the other parent has physical placement with the child to determine each parent's comparative child support obligation. Whichever parent has the larger comparative child support obligation pays the difference between the two to the other parent as child support.

Under the bill, a court is still authorized, upon a party's request, to modify the amount of child support that would be ordered by using the new percentage standard if the court finds that its use is unfair to the child or either of the parties after considering the factors under current law. However, if the court does modify the amount of child support that would be ordered by using the new percentage standard, the court is still prohibited from calculating any child support on a parent's net income over \$150,000 per year, unless the parties agree in writing or in open court that the court is not prohibited from doing so. In addition, the bill adds, as another factor for the court to consider, the amount of income actually available to a parent for the payment of child support. The bill directs DCF to promulgate rules on how

Enstat Anal-1

health insurance premiums for the child for whom support is determined

determined

child support payments

the amount

Enstat Anal-2

to compute the amount of income actually available to a parent, and provides that, if a parent is self-employed, a cash flow statement from a certified public accountant on behalf of the parent establishes the parent's income that is actually available for support.

Current law provides that the court may require a portion of the amount that either party must pay in child support to be set aside in a separate fund or trust for the support, education, and welfare of the child. The bill does not change the ability of the court to set funds aside for the child. The bill adds, however, that if the court determines that the amount of child support calculated in the new manner exceeds the amount reasonably necessary to support the child's current needs, the court must order the excess to be deposited in an account that requires the signatures of both parents for withdrawal, to be used for any extraordinary needs of the child. When the child support obligation ends, any funds remaining must be used for postsecondary education expenses of the child. Any funds remaining after ten years after the child support obligation ends must be returned to the parent or parents in proportion to their comparative child support obligations or distributed in another manner specified by the court.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill provides that the creation of the new percentage standard in the statutes and the other new requirements related to determining child support constitute a substantial change in circumstances on which a revision may be based. The bill also provides that any agreement related to child support that was entered into before the effective date of the bill that has not yet been approved by a court is void unless the parties reaffirm the agreement in writing or in open court on or after the effective date of the bill. Finally, the bill provides that the court may determine a parent's child support obligation in conformity with any provisions of the code that are not in conflict with the new percentage standard or other new requirements in the statutes.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 767.215 (1) (b) of the statutes is amended to read:

767.215 (1) (b) The clerk of court shall provide without charge, to each person filing a petition requesting child support, a document setting forth the percentage standard established by the department under s. 49.22 (9) 767.511 (1j) (b) and listing the factors that a court may consider under s. 767.511 (1m).

1 SECTION 2. 767.215 (2m) (a) 2. of the statutes is amended to read:

2 767.215 (2m) (a) 2. Shall be accompanied by a document, provided without
3 charge by the clerk of court, setting forth the percentage standard under s. 767.511
4 (1j) (b) or, if the action affecting the family is one under s. 767.001 (1) (m), the
5 percentage standard established by the department under s. 49.22 (9) and listing the
6 factors that a court may consider under s. 767.511 (1m).

7 SECTION 3. 767.225 (1n) (b) 1. of the statutes is amended to read:

8 767.225 (1n) (b) 1. If the court makes a temporary child support order that
9 deviates from the amount of support that would be required by using the percentage
10 standard under s. 767.511 (1j)(b) or, if the action affecting the family is one under
11 s. 767.001 (1) (m), the percentage standard established by the department under s.
12 49.22 (9), the court shall comply with the requirements ^{plain} (of) relating to the court's
13 statements in writing or on the record described under s. 767.511 (1n). The court may
14 make a temporary child support order that deviates from the amount that would be
15 required by using the percentage standard under s. 767.511 (1j) (b) by reducing, but
16 not by increasing, that amount.

17 SECTION 4. 767.511 (1) (a) of the statutes is amended to read:

18 767.511 (1) (a) ~~Order~~ Determine the support obligation of each parent who has
19 physical placement with his or her child for less than 75 percent of the time and order
20 either or both parents to pay an amount reasonable or necessary to fulfill a duty to
21 support -a the child. The support amount must be expressed as a fixed sum unless
22 the parties have stipulated to expressing the amount as a percentage of the payer's
23 income and the requirements under s. 767.34 (2) (am) 1. to 3. are satisfied.

24 SECTION 5. 767.511 (1j) (title) of the statutes is amended to read:

Insert 6-23

keep

1 767.511 (1j) (title) PERCENTAGE CALCULATION; PERCENTAGE STANDARD GENERALLY
2 REQUIRED.

3 **SECTION 6.** 767.511 (1j) of the statutes is renumbered 767.511 (1j) (b) (intro.)
4 and amended to read:

5 767.511 (1j) (b) (intro.) Except as provided in sub. (1m), the court shall
6 determine the child support payments by using the percentage standard established
7 by the department under s. 49.22 (9). obligation of a parent in the following manner:

8 **SECTION 7.** 767.511 (1j) (a) of the statutes is created to read:

9 767.511 (1j) (a) In this subsection:

10 1. "Gross income" has the meaning given in s. DCF 150.02 (13) (a), Wis. Adm.
11 Code.

12 2. a. Except as provided in subd. 2. b., "net income" means gross income less
13 federal and state income tax that would be withheld based on the actual number of
14 dependents that the individual is legally entitled to claim on his or her income tax
15 return or that would be paid by a self-employed individual based on the actual
16 number of dependents that the self-employed individual is legally entitled to claim
17 on his or her income tax return.

18 b. For a parent who voluntarily terminates or reduces his or her income for any
19 reason, "net income" means that parent's earning capacity, as determined by the
20 court.

21 **SECTION 8.** 767.511 (1j) (b) 1. of the statutes is created to read:

22 767.511 (1j) (b) 1. Subject to subd. 3., if the parent's total monthly net income
23 is \$7,000 or less, his or her monthly child support obligation equals the amount that
24 is the following percentage of his or her total monthly net income:

25 a. For one child, 17 percent.

- 1 b. For 2 children, 25 percent.
2 c. For 3 children, 29 percent.
3 d. For 4 children, 31 percent.
4 e. For more than 4 children, 34 percent.

5 **SECTION 9.** 767.511 (1j) (b) 2. of the statutes is created to read:

6 767.511 (1j) (b) 2. Subject to subds. 2m. and 3., if the parent's total monthly net
7 income exceeds \$7,000, his or her monthly child support obligation equals the
8 amount that is the following percentage of his or her total monthly net income:

- 9 a. For one child, 14 percent.
10 b. For 2 children, 20 percent.
11 c. For 3 children, 23 percent.
12 d. For 4 children, 25 percent.
13 e. For more than 4 children, 27 percent.

14 **SECTION 10.** 767.511 (1j) (b) ^e2m. of the statutes is created to read:

15 ^{any portion of} 767.511 (1j) (b) ^e2m. The court may not order any amount of child support based
16 on a parent's ~~net~~ ^{gross} income that exceeds \$150,000 per year. This income amount shall
17 be adjusted annually, beginning in 2015; to reflect changes in the consumer price
18 index for all urban consumers, U.S. city average, as determined by the U.S.
19 department of labor.

20 **SECTION 11.** 767.511 (1j) (b) ^c2r. of the statutes is created to read:

21 767.511 (1j) (b) ^c2r. The court may not order any amount of child support based
22 on the value of any of a parent's assets.

23 **SECTION 12.** 767.511 (1j) (b) ^d3. of the statutes is created to read:

24 767.511 (1j) (b) ^d3. When the court calculates a parent's child support obligation
25 unless the parties agree otherwise in writing or orally in open court, the court shall

the amount of

payments

para. (a) to (c)
1 reduce the amount determined under subd. 1. or 2. for the parent by the amount per
2 month that the parent currently pays or is ordered to pay for any of the following

3 costs:

- 4 a. Health care coverage for the child.
- 5 b. The child's health care expenses that are not covered by insurance.
- 6 c. Child care expenses.

health insurance premiums attributable to the child for whom the support is being determined.

7 **SECTION 13.** 767.511 (1j) (b) 4. of the statutes is created to read:

8 767.511 (1j) (b) 4. If each parent has physical placement with a child for more
9 than 25 percent of the time, the child support obligation of each parent shall be
10 calculated as provided in subds. 1. to 3. and multiplied by the percentage of time that
11 the other parent has physical placement with the child. The product of a parent's
12 child support obligation multiplied by the percentage of time that the other parent
13 has physical placement with the child is that parent's comparative child support
14 obligation amount. Subject to sub. (2) (b), the parent with the larger comparative
15 child support obligation amount shall pay to the other parent that amount reduced
16 by the payee parent's comparative child support obligation amount.

17 **SECTION 14.** 767.511 (1j) (b) 5. of the statutes is created to read:

18 767.511 (1j) (b) 5. In addition to the calculations under subds. 1. to 4., the court
19 may determine a parent's child support obligation under this section in conformity
20 with any state administrative rules relating to child support that are not in conflict
21 with subds. 1. to 4.

22 **SECTION 15.** 767.511 (1m) (intro.) of the statutes is amended to read:

23 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
24 party, the court may modify, by reducing but not by increasing, the amount of child
25 support payments determined under sub. (1j) if, after considering the following

① factors, the court finds by the greater weight of the credible evidence that ~~use of the~~
② ~~percentage standard~~ is unfair to the child or to any of the parties:

3 **SECTION 16.** 767.511 (1m) (bc) of the statutes is created to read:

4 767.511 (1m) (bc) The amount of income actually available to a parent for the
5 payment of child support.

6 **SECTION 17.** 767.511 (1n) of the statutes is amended to read:

7 767.511 (1n) DEVIATION FROM STANDARD; RECORD. If the court finds under sub.
⑧ (1m) that ~~use of the percentage standard~~ under sub. (1j) (b) is unfair to the child or
9 the requesting party, the court shall state in writing or on the record the amount of
10 support that would be required by ~~using the percentage standard~~ under sub. (1j) the amount by
11 which the court's order deviates is reduced from that amount, its reasons for finding
⑫ that ~~use of the percentage standard~~ is unfair to the child or the party, its reasons for
13 the amount of the ~~modification~~ reduction, and the basis for the ~~modification~~
14 reduction.

15 **SECTION 18.** 767.511 (1p) of the statutes is created to read:

16 767.511 (1p) RULES FOR INCOME AVAILABLE FOR SUPPORT. The department shall
17 promulgate rules related to how the amount of income actually available to a parent
18 for the payment of child support shall be computed for purposes of sub. (1m) (bc). If
19 a parent is self-employed, a cash flow statement prepared by a certified public
20 accountant on behalf of the parent shall establish the parent's income actually
21 available for the payment of child support for purposes of sub. (1m) (bc).

22 **SECTION 19.** 767.511 (1r) of the statutes is created to read:

②③ 767.511 (1r) MINIMUM AND MAXIMUM REVISION AMOUNTS PROHIBITED. Unless
24 based on a written stipulation of the parties, the court may not grant a child support
②⑤ order that sets a minimum or maximum amount of support that may be ordered in

*the amount of child support
determined under sub. (1j)*

1 the future in the event that the child support order is revised under s. 767.59 or a
2 substantially similar law of another state.

3 **SECTION 20.** 767.511 (2) (title) of the statutes is amended to read:

4 767.511 (2) (title) SEPARATE ACCOUNT, FUND, OR TRUST.

5 **SECTION 21.** 767.511 (2) of the statutes is renumbered 767.511 (2) (a) and
6 amended to read:

7 767.511 (2) (a) The Except as provided in par. (b), the court may protect and
8 promote the best interests of the minor children by setting aside a portion of the child
9 support ~~which~~ that either party is ordered to pay in a separate fund or trust for the
10 support, education, and welfare of such children.

11 **SECTION 22.** 767.511 (2) (b) of the statutes is created to read:

12 767.511 (2) (b) If the court determines that the amount of child support
13 calculated in the manner provided in this section exceeds the amount reasonably
14 necessary to support the child's current needs, the court shall order that the excess
15 amount be deposited in an account requiring the signatures of both parents for
16 withdrawal, to be used for any extraordinary needs of the child on which the parents
17 agree. Any funds remaining in the account when the child support obligation ends
18 shall be used for postsecondary education expenses for the child. Any funds
19 remaining in the account after 10 years from the date on which the child support
20 obligation ends shall be returned to the parents in proportion to the comparative
21 child support obligation of each under sub. (1j) (b) 4. or, if only one parent had a child
22 support obligation, to that parent.

23 **SECTION 23.** 767.513 (2) of the statutes is amended to read:

24 767.513 (2) **RESPONSIBILITY AND PAYMENT.** In addition to ordering child support
25 for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (b) 3. the court shall

d

1 specifically assign responsibility for and direct the manner of payment of the child's
2 health care expenses. In assigning responsibility for a child's health care expenses,
3 the court shall consider whether a child is covered under a parent's health insurance
4 policy or plan at the time the court approves a stipulation for child support under s.
5 767.34, enters a judgment of annulment, divorce, or legal separation, or enters an
6 order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or
7 (j), 767.501, or 767.805 (3), the availability of health insurance to each parent
8 through an employer or other organization, the extent of coverage available to a
9 child, and the costs to the parent for the coverage of the child. A parent may be
10 required to initiate or continue health care insurance coverage for a child under this
11 section. If a parent is required to do so, he or she shall provide copies of necessary
12 program or policy identification to the custodial parent and is liable for any health
13 care costs for which he or she receives direct payment from an insurer. This section
14 shall not be construed to limit the authority of the court to enter or modify support
15 orders containing provisions for payment of medical expenses, medical costs, or
16 insurance premiums that are in addition to and not inconsistent with this section.

17 **SECTION 24.** 767.531 (intro.) (except 767.531 (title)) of the statutes is
18 renumbered 767.531 (1m) and amended to read:

19 767.531 (1m) The court may make a financial order designated "family
20 support" as a substitute for child support orders under s. 767.511 and maintenance
21 payment orders under s. 767.56. ^{insert 12-21} ~~The court may not order a party to pay~~ family

22 support payments that exceed the child support payments that the party would be
23 required to pay as determined under s. 767.511 (1j).

24 **(2m)** A party ordered to pay family support under this section shall pay simple
25 interest at the rate of 1% per month on any amount in arrears that is equal to or

an amount of child support that exceeds

1 greater than the amount of child support due in one month. If the party no longer
2 has a current obligation to pay child support, interest at the rate of 1% per month
3 shall accrue on the total amount of child support in arrears, if any. Interest under
4 this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4), or 815.05
5 (8) and is paid to the department or its designee under s. 767.57.

6 **(3m)** Except as provided in s. 767.57 (1m), the department or its designee shall
7 apply all payments received for family support as follows:

8 **SECTION 25.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

9 **SECTION 26.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

10 **SECTION 27.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

11 **SECTION 28.** 767.542 of the statutes is created to read:

12 **767.542 Discovery about use of support.** At any time after a final judgment
13 requiring a party to pay child or family support is entered under this subchapter, the
14 payer may use any of the methods of discovery specified in ch. 804 to obtain
15 information about the purposes for which the payee has used or is using the child or
16 family support. This section applies with respect to final judgments entered before,
17 on, or after the effective date of this section [LRB inserts date].

18 **SECTION 29.** 767.55 (2) (c) of the statutes is amended to read:

19 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
20 parent to pay child support equal to the amount determined by applying the
21 ~~percentage standard established under s. 49.22 (9) 767.511 (1j) (b)~~ or equal to the
22 amount of child support that the parent was ordered to pay in the most recent
23 determination of support under this chapter. The child support obligation ordered
24 under this paragraph continues until the parent makes timely payment in full for
25 3 consecutive months or until the person participates in the program under s. 49.36

1 for 16 weeks, whichever occurs first. The court shall provide in its order that the
2 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
3 after the obligation to make payments ordered under this paragraph ceases.

4 **SECTION 30.** 767.553 (1) (a) of the statutes is amended to read:

5 767.553 (1) (a) An order for child or family support under this chapter may
6 provide for an annual adjustment in the amount to be paid based on a change in the
7 payer's income if the amount of child or family support is expressed in the order as

8 a fixed sum and ~~based on the percentage standard established by the department~~
9 ^{determined} under s. 49.22 (9) ~~767.511 (1j) (b)~~. No adjustment may be made under this section
10 unless the order provides for the adjustment.

11 **SECTION 31.** 767.553 (1) (b) of the statutes is amended to read:

12 767.553 (1) (b) An adjustment under this section may not be made more than
13 once in a year and shall be determined ~~on the basis of the percentage standard~~
14 ~~established by the department under s. 49.22 (9) 767.511 (1j) (b)~~.

15 **SECTION 32.** 767.57 (1m) (intro.) of the statutes is amended to read:

16 767.57 (1m) OVERPAYMENT. (intro.) ~~Notwithstanding ss. 767.511 (6) and~~
17 ~~767.531, if~~ If the department or its designee receives support or maintenance money
18 that exceeds the amount due in the month in which it is received and the department
19 or its designee determines that the excess amount is for support or maintenance due
20 in a succeeding month, the department or its designee may hold the amount of
21 overpayment that does not exceed the amount due in the next month for
22 disbursement in the next month if any of the following applies:

23 **SECTION 33.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

24 767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either
25 of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,

1 or a county child support agency under s. 59.53 (5) if an assignment has been made
2 under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.19 (4) (h), or 49.45 (19) or if either
3 party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.
4 49, a court may, except as provided in ^{para.} ~~par. (b)~~ and subject to sub. (1f) (a), do any of
5 the following:

6 **SECTION 34.** 767.59 (1c) (a) 1. of the statutes is amended to read:

7 767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the
8 amount and payment of maintenance or child support and the appropriation and
9 payment of the principal and income of property held in trust. The court may revise
10 and alter a child support order regardless of whether the amount of support was
11 determined by the court, by court approval of a stipulation of the parties, or through
12 arbitration.

13 **SECTION 35.** 767.59 (1f) (a) of the statutes is repealed and recreated to read:

14 ~~767.59 (1f) (a) Except as provided in par. (d), in an action under this section to~~
15 ~~revise a judgment or order as to the amount of child or family support, both of the~~
16 ~~following apply:~~

17 ~~1. The court may not revise the judgment or order as to the amount of child or~~
18 ~~family support unless the court finds a substantial change in circumstances.~~

19 ~~2. The court must revise the judgment or order as to the amount of child or~~
20 ~~family support if the court finds a substantial change in circumstances.~~

21 **SECTION 36.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

22 ^{plainly} 767.59 (1f) (b) (intro.) In Except as provided in par. (bm), in an action under
23 this section to revise a judgment or order with respect to the amount of child support,
24 any of the following constitutes a rebuttable presumption of a substantial change in
25 circumstances sufficient to justify require a revision of the judgment or order:

1 **SECTION 37.** 767.59 (1f) (b) 4. of the statutes is amended to read:

2 767.59 (1f) (b) 4. A. If the action is one to revise a judgment or order with respect
3 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
4 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), a difference between the
5 amount of child support ordered by the court to be paid by the payer and the amount
6 that the payer would have been required to pay based on the percentage standard
7 established by the department under s. 49.22 (9) if the court did not use ^{plain} ~~the~~ ^{that} ~~that~~
8 percentage standard in determining the child support payments and did not provide
9 the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or
10 767.511 (1n), whichever is appropriate.

or 948.22(7)

11 **SECTION 38.** 767.59 (1f) (b) 5. of the statutes is created to read:

12 767.59 (1f) (b) 5. If the action is one to revise a judgment or order with respect
13 to child support or family support ordered under this chapter or s. 948.22 (7), a
14 difference between the amount of child support ordered by the court to be paid by the
15 payer and the amount that the payer would have been required to pay based on the
16 percentage standard under s. 767.511 (1j) (b) if the court did not use that percentage
17 standard in determining the ^{determine} child support payments and did not provide the
18 information required under s. 767.511 (1n). ^{in the manner provided}

under A. 767.511 (1j)

19 **SECTION 39.** 767.59 (1f) (bm) of the statutes is created to read:

20 767.59 (1f) (bm) In an action under this section to revise a judgment or order
21 with respect to child support or family support ordered under this chapter or s.
22 948.22 (7), the court shall find a substantial change of circumstances sufficient to
23 require revision of the judgment or order if any of the following applies:

24 2. The amount of child support ordered by the court to be paid by the payer
25 exceeds the amount that the payer would have been required to pay based on the

percentage standard under s. 767.511 (1j) (b) by 20 percent or more of the amount that the payer would have been required to pay based on that percentage standard and the court did not use the percentage standard under s. 767.511 (1j) (b) in determining the child support payments and did not provide the information required under s. 767.511 (1n).

SECTION 40. 767.59 (1f) (c) (intro.) of the statutes is amended to read:

767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or order with respect to an amount of child support, any of the following may constitute a substantial change ⁱⁿ of circumstances sufficient to justify require revision of the judgment or order:

SECTION 41. 767.59 (1f) (c) 1. of the statutes is renumbered 767.59 (1f) (bm) 1.

SECTION 42. 767.59 (1f) (d) of the statutes is amended to read:

767.59 (1f) (d) In Paragraph (a) does not apply to an action under this section to revise a judgment or order with respect to child or family support, ~~the court is not required to make a finding of a substantial change in circumstances to change to a~~ fixed sum the manner in which the amount of child or family support is expressed in the judgment or order.

SECTION 43. 767.59 (2) (a) of the statutes is amended to read:

767.59 (2) (a) Except as provided in par. (b) ^{plain} ~~or (e)~~, if the court revises a judgment or order with respect to child support payments ordered under this chapter or s. 948.22 (7), it shall do so [↓] ~~by using the percentage standard established by the~~ department under s. ~~49.22 (9)~~ 767.511 (1j) (b).

SECTION 44. 767.59 (2) (b) of the statutes is amended to read:

767.59 (2) (b) Upon request by a party, the court may modify, by reducing but not by increasing, the amount of revised child support payments determined under

in the manner provided

1 par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by
2 the greater weight of the credible evidence, that the ~~use of the percentage standard~~
3 ~~under s. 767.511 (1j) (b)~~ is unfair to the child or to any of the parties.

4 SECTION 45. 767.59 (2m) of the statutes is created to read:

5 767.59 (2m) MINIMUMS ~~AND MAXIMUMS~~ ARE VOID. In an action under this section
6 to revise a judgment or order with respect to the amount of child support, if the
7 judgment or order was granted on or after the effective date of this subsection ...

8 [LRB inserts date], any provision in the judgment or order that sets a minimum ~~or~~
9 ~~maximum~~ amount of child support that may be ordered in the future in the event that
10 the child support order is revised under this section or a substantially similar law
11 of another state is void and may not be given effect by the court unless the provision
12 was based on a written stipulation of the parties.

13 SECTION 46. 767.80 (7) of the statutes is amended to read:

14 767.80 (7) CLERK TO PROVIDE DOCUMENT. The clerk of court shall provide without
15 charge to each person bringing an action under this section, except to the state under
16 sub. (1) (g) or (6m), a document setting forth the percentage standard established by
17 the department under s. 49.22 (9) 767.511 (1j) (b) and listing the factors that a court
18 may consider under s. 767.511 (1m).

19 SECTION 47. 767.813 (6) of the statutes is amended to read:

20 767.813 (6) DOCUMENT. The summons served on the respondent shall be
21 accompanied by a document, provided without charge by the clerk of court, setting
22 forth the percentage standard established by the department under s. 49.22 (9)
23 767.511 (1j) (b) and listing the factors that a court may consider under s. 767.511
24 (1m).

25 SECTION 48. 767.85 (2) of the statutes is amended to read:

amount of child support
determined in the manner
provided

regardless of when the judgment or order was
granted,

Keep

767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1), the court shall consider those factors that the court is required to consider when granting a final judgment on the same subject matter. If the court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard established by the department under s. 49.22 (9) 767.511 (1j)(b), the court shall comply with the requirements of s. 767.511 (1n). The court may make a temporary child support order that deviates from the amount that would be required by using the percentage standard under s. 767.511 (1j)(b) by reducing, but not by increasing, that amount.

SECTION 49. Nonstatutory provisions.

(1) SUBSTANTIAL CHANGE IN CIRCUMSTANCES. Notwithstanding section 767.59 (1f) (b) 5. of the statutes, as created by this act, the renumbering and amendment of section 767.511 (1j) of the statutes by this act and the creation of section 767.511 (1j) (b) 1. to 4. and (1m) (bc) ^{insert 19-14} of the statutes by this act constitute a substantial change in circumstances requiring a revision under section 767.59 of the statutes, as affected by this act, of a judgment or order with respect to child or family support ^{insert 19-16}

(2) AGREEMENTS VOID. Any agreement entered into before the effective date of this subsection by parties to an action affecting the family, as defined in section 767.001 (1) of the statutes, that relates to child support and that has not been approved by a court before the effective date of this subsection is void unless the parties reaffirm the agreement in writing or in open court on or after the effective date of this subsection.

(3) DOCUMENT PROVIDED BY CLERK SETTING FORTH PERCENTAGE STANDARD.

(a) Notwithstanding sections 767.215 (1) (b) and (2m) (a) 2., 767.511 (1m) (bc), 767.80 (7), and 767.813 (6) of the statutes, as affected by this act, and SECTION 50 (2)

1 (a) of this act, a clerk of court is not required to provide a document under section
2 767.215 (1) (b) or (2m) (a) 2., 767.80 (7), or 767.813 (6) of the statutes, as affected by
3 this act, that sets forth the percentage standard under section 767.511 (1j) (b) of the
4 statutes, as affected by this act, and lists the factors that a court may consider under
5 section 767.511 (1m) of the statutes, including section 767.511 (1m) (bc) of the
6 statutes, as created by this act, before the first day of the 3rd month beginning after
7 the effective date of this paragraph.

8 (b) Before the date specified in paragraph (a), a clerk of court may, in all actions
9 affecting the family, provide a document under section 767.215 (1) (b) or (2m) (a) 2.,
10 767.80 (7), or 767.813 (6) of the statutes, as affected by this act, that sets forth the
11 percentage standard established by the department of children and families under
12 section 49.22 (9) of the statutes and lists the factors that a court may consider under
13 section 767.511 (1m) (a), (b), and (bj) to (i) of the statutes.

14 (c) As soon as practicable after the date specified in paragraph (a), a clerk of
15 court shall provide a document that sets forth the percentage standard under section
16 767.511 (1j) (b) of the statutes, as affected by this act, and lists the factors that a court
17 may consider under section 767.511 (1m) of the statutes, including section 767.511
18 (1m) (bc) of the statutes, as created by this act, to each person to whom the clerk
19 provided, after the effective date of this paragraph, a document described in
20 paragraph (b), except for a person who is a party in an action affecting the family, as
21 defined in section 767.001 (1) (m) of the statutes.

22 (d) Each person who receives a document under paragraph (c) from a clerk of
23 court and who served a summons under section 767.215 (2m) of the statutes, as
24 affected by this act, or under section 767.813 (6) of the statutes, as affected by this
25 act, after the effective date of this paragraph accompanied by a document described

1 in paragraph (b) shall as soon as practicable provide the document received from the
2 clerk under paragraph (c) to the party on whom the summons accompanied by the
3 document described in paragraph (b) was served.

4 **SECTION 50. Initial applicability.**

5 (1) GENERAL. Except as provided in subsection (2) and in sections 767.542 and
6 767.59 (2m) of the statutes, as created by this act, this act first applies to child or
7 family support orders, including temporary orders and orders revising judgments or
8 orders previously granted, that are granted on the effective date of this subsection.

9 (2) DOCUMENTS PROVIDED BY CLERK.

10 (a) The treatment of sections 767.215 (1) (b) and (2m) (a) 2., 767.80 (7), and
11 767.813 (6) of the statutes first applies to actions or proceedings, including actions
12 or proceedings to modify a judgment or order previously granted, that are
13 commenced on the effective date of this paragraph.

14 (b) SECTION 49 (3) of this act first applies to actions or proceedings, including
15 actions or proceedings to modify a judgment or order previously granted, that are
16 commenced on the effective date of this paragraph.

17 (END)

D - note

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P3ins
PJK:.....

INSERT RC

1 ^{not} child support changes, including prohibiting basing support on income over
2 \$150,000 per year, deducting the amount of health insurance premiums from the
3 support amount, prohibiting increasing support above the standard amount,
4 prohibiting orders that set minimum future support amounts, requiring a support
5 revision if there has been a substantial change in circumstances, and requiring the
6 exercise of rule-making authority

(END OF INSERT RC)

INSERT ANAL-1

^{not} This bill makes a few modifications to the way in which child support is
determined. The bill provides that child support may be based only on a parent's
actual income or imputed income based on earning capacity, as determined by the
court. The bill provides that child support may not be based on any of a parent's
assets and that it may not be based on any of a parent's annual gross income that
exceeds \$150,000, annually adjusted in accordance with the consumer price index.
The bill conforms the statutory provision that authorizes DCF to promulgate rules
establishing the percentage standard with these changes.

(END OF INSERT ANAL-1)

INSERT ANAL-2

^{not} may modify the amount of child support it has determined in the manner
provided in the statutes only by reducing that amount. The requirement that a court
may only reduce the amount of support that it has determined in the manner
provided in the statutes also applies to temporary support orders and to revisions of
support orders.

(END OF INSERT ANAL-2)

INSERT ANAL-3

^{not} The bill does not change this requirement, however, the bill also provides that,
if the court does find that there has been a substantial change in circumstances, the

↓

Ins anal-3 contd

court must revise the amount of child support under an existing order. In addition, the

(END OF INSERT ANAL-3)

INSERT ANAL-4

will that requires a court to revise an existing child support order that was based on the method of determining child support before the enactment of the bill

(END OF INSERT ANAL-4)

INSERT ANAL-5

It The bill makes a few other changes relating to support. Under current law, family support is an order that combines child support and maintenance (formerly called alimony) into a single support amount. The bill provides that a family support order may not include a child support amount that exceeds the amount of child support that would be determined otherwise in the manner provided in the statutes. The bill prohibits a court from including a provision in a support order that sets a minimum amount of child support that may be ordered at a future time if the support order is revised, unless the provision is based on a written stipulation of the parties. The bill also provides that, in an action to revise an order with respect to the amount of child support, regardless of when the order was granted, if it includes a provision that sets a minimum amount of support that may be ordered at a future time, that provision is void and may not be given effect, unless it is based on a written stipulation of the parties.

(END OF INSERT ANAL-5)

INSERT 6-23

- 1 **SECTION 1.** 49.22 (9) of the statutes is amended to read:
- 2 49.22 (9) The department shall promulgate rules that provide a standard for
- 3 courts to use in determining a child support obligation based upon a percentage of
- 4 the gross income ~~and assets~~ of either or both parents. The rules shall provide for
- 5 consideration of the income of each parent and the amount of physical placement
- 6 with each parent in determining a child support obligation in cases in which a child
- 7 has substantial periods of physical placement with each parent. The rules may not



Ins 6-23 cont'd

1 base any amount of child support on a parent's gross income that exceeds \$150,000
2 per year. *any portion of*

History: 1975 c. 82; 1977 c. 26, 29, 203, 418; 1979 c. 196, 221; 1981 c. 20, 93; 1983 a. 27; 1985 a. 29 ss. 861m to 866, 2390 to 2399; 1987 a. 27; 1987 a. 332 s. 64; 1987 a. 399, 403, 413; 1989 a. 31; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 ss. 2128m to 2134, 9126 (19), 9130 (4); 1995 a. 77, 187, 201, 225, 289; 1995 a. 404 ss. 39 to 43, 45, 46, 48, 173, 174; Stats. 1995 s. 49.22; 1997 a. 27, 105, 191, 237; 1999 a. 32; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1467 to 1472, 9121 (6) (a).

****NOTE: Do you want to change the rules in this way? I have removed "assets" from what DCF may factor into the percentage standard to conform the rules to proposed s. 767.511 (1j) (c). Okay?

****NOTE: I have also changed *net* income of \$150,000 to *gross* income of \$150,000. This is because net income amount will be affected by any number of factors that are unique to each individual. Since the percentage standard is based on gross income, I think the income limit for determining support must be gross income, too. Okay? If \$150,000 is too low in terms of gross income, the amount can be raised.

3 **SECTION 2.** 767.225 (1n) (b) 1. of the statutes is amended to read:
4 767.225 (1n) (b) 1. If the court makes a temporary child support order that
5 deviates from the amount of support that would be required by using the percentage
6 standard established by the department under s. 49.22 (9) 767.511 (1j), the court
7 shall comply with the requirements of s. 767.511 (1n). The court may make a
8 temporary child support order that deviates from the amount that would be required
9 under s. 767.511 (1j) by reducing, but not by increasing, that amount.

History: 1971 c. 149; 1971 c. 211 s. 126; 1971 c. 220, 307; 1975 c. 283; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 111, 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.23; 1983 a. 27; 1983 a. 204 s. 22; 1983 a. 447; 1985 a. 29 s. 3202 (9); 1987 a. 355, 364, 413; 1989 a. 212; 1991 a. 39; 1993 a. 78, 481, 490; 1995 a. 27 ss. 7100h, 9126 (19); 1995 a. 70, 404; 1999 a. 9; 2001 a. 16, 61; 2003 a. 130, 326; 2005 a. 174, 342; 2005 a. 443 ss. 86 to 91; Stats. 2005 s. 767.225; 2007 a. 96.

(END OF INSERT 6-23)

INSERT 8-13

10 **SECTION 3.** 767.511 (1j) of the statutes is renumbered 767.511 (1j) (intro.) and
11 amended to read:
12 767.511 (1j) (intro.) Except as provided in sub. (1m), the court shall determine
13 child support payments by using in the following manner:



ins 8-13 contd

- 1 (a) Except as otherwise provided in this subsection, the court shall use the
2 percentage standard established by the department under s. 49.22 (9).

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32; 2001 a. 16, 61; 2005 a. 253, 342; 2005 a. 443 ss. 103, 105, 219; Stats. 2005 s. 767.511; 2009 a. 185; 2011 a. 32.

(END OF INSERT 8-13)

INSERT 8-19

****NOTE: I have changed "net" income of \$150,000 to "gross" income of \$150,000.
See my ****NOTE after s. 49.22 (9).

(END OF INSERT 8-19)

INSERT 8-21

- 3 ~~not~~ shall base child support payments only on a parent's actual income or on
4 imputed income based on earning capacity, as determined by the court, and

(END OF INSERT 8-21)

INSERT 12-21

- 5 ~~not~~ As part of a family support order, the

(END OF INSERT 12-21)

INSERT 15-12

- 6 **SECTION 4.** 767.59 (1c) (c) of the statutes is created to read:
7 767.59 (1c) (c) In an action under this section to revise a judgment or order as
8 to the amount of child or family support, the court must revise the judgment or order
9 as to the amount of child or family support if the court finds a substantial change in
10 circumstances.

(END OF INSERT 15-12)

INSERT 18-12



Ins 18-12

****NOTE: I have modified this provision as you requested so that a provision in an order entered before the effective date of the act that sets a minimum future child support amount is void and may not be given effect. I think that this may present a separation-of-powers problem, however. It is fine for the legislature to say that such orders may not be granted any longer; however, the legislature may be overstepping its bounds and impermissibly interfering with another branch of government when it says that a court order that was perfectly legal when granted is now void and may not be given effect. It would be preferable to make any such order void and unenforceable if granted after the effective date, which is the date on which they were first prohibited.

(END OF INSERT 18-12)

INSERT 19-14

- 1 *not* the treatment of sections 49.22 (9), 767.511 (1m) (intro.) and (1n), 767.531
2 (intro.), 767.59 (1c) (a) (intro.) and 1. and (c) and (2) (a) and (b) of the statutes by this
3 act, the renumbering and amendment of section 767.511 (1j) of the statutes by this
4 act, and the creation of section 767.511 (1j) (b), (c), and (d)

(END OF INSERT 19-14)

INSERT 19-16

- 5 *not*, of a judgment or order that was entered before the effective date of this
6 subsection✓

(END OF INSERT 19-16)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P3dn

PJK:.....

- date -

SAC

I have made all of the changes suggested in the redraft instructions. I have included embedded NOTES where I had questions or comments or where I modified the suggestion slightly. The changes in this draft apply only to support orders made in family matters (divorce, paternity, etc.) and not to the support orders referenced in s. 767.001 (1) (m). Those orders, however, would be affected by the changes to the rules under s. 49.22 (9), which is the percentage standard.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P3dn
PJK:sac:rs

December 14, 2012

I have made all of the changes suggested in the redraft instructions. I have included embedded NOTES where I had questions or comments or where I modified the suggestion slightly. The changes in this draft apply only to support orders made in family matters (divorce, paternity, etc.) and not to the support orders referenced in s. 767.001 (1) (m). Those orders, however, would be affected by the changes to the rules under s. 49.22 (9), which is the percentage standard.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Braun, Rick
Sent: Wednesday, December 26, 2012 1:20 PM
To: Kahler, Pam
Subject: FW: Review of Draft Bill

Pam:

Following is a list of questions/comments from Michael Eisenga's lawyer regarding the latest draft of the child support bill. For some reason my email won't let me italicize the questions/comments so I will instead begin that section with brackets.

Thanks,

Rick Braun
Office of Rep. Joel Kleefisch

[The following are On Page 4 there are two questions after line 9.

I believe you want child support based on income only so the answer to the first question is yes.

I think the answer to the second question is yes as well.

The same change is addressed in the note after line 17 on page 5 and I agree with the change.

On page 7 I don't see a benefit in permitting minimum future child support orders even they are based on a stipulation.

On page 10, I am troubled by section 23

I don't know why the underlined addition to 767.59 (1f)(b) 4 is there.

23 & 24 are the same but one is change for out-of-home placement (which is not change 1) & the other is for from action

I think that the reference to s.49.22 (9) should also include a reference to s. 767.511 and 767.59

With respect to s.767.59 (1f) (b) 5 (line 7 on page 11) why not put a period after s. 767.511 (1j) and delete the balance of that proposed revision?

it parallels what is in current law

On page 12, lines 9 and 10, the question is again raised whether even a agreement the parties that includes a minimum support order should be approved.

Why is section 30 non statutory? This means it won't be in the law books and may not have the effect you wish.]

→ only way to address an act, as opposed to specific stat how stat are treated is

& here is constitute submit change

what is a stat parallels current law which is why this says NWS

Kahler, Pam

From: Kahler, Pam
Sent: Wednesday, January 02, 2013 12:51 PM
To: Braun, Rick
Subject: RE: Review of Draft Bill

*per Rick Braun, redraft
w/ these changes
↓*

Rick:

I think there are two issues that need to be resolved. One is not allowing minimum future child support orders even if the parties stipulate to it. That is easy enough to take care of.

The other issue relates to revisions of child support orders under s. 767.59. In the draft, child support in actions affecting the family, but not in out-of-home placements of children, is determined under s. 767.511 (1j). That is the reason for section 23 in the draft. That section (s. 767.59 (1f) (b) 4.) is amended to apply to revisions of support orders in out-of-home placements and section 24 is created to say the same thing but be applicable to child support revisions in actions affecting the family. The two provisions (s. 767.59 (1f) (b) 4. and 767.59 (1f) (b) 5.) should be parallel in language but apply to different child support situations. The nonstatutory subsection is how I have to draft a provision that refers to the effect of the actual passage of the bill. Perhaps what is wanted instead is to change proposed s. 767.59 (1f) (b) 5. to constituting a substantial change in circumstances, rather than constituting a rebuttable presumption of a substantial change in circumstances. That would require a court to find a substantial change in circumstances if there is a difference in the amount of child support between what is in an order and what would be ordered if the court had followed the new rules (which is different from saying that the court must find that the passage of this bill constitutes a substantial change in circumstances).

Let me know if any of this needs more clarification.

Pam

-----Original Message-----

From: Braun, Rick
Sent: Wednesday, December 26, 2012 1:20 PM
To: Kahler, Pam
Subject: FW: Review of Draft Bill

Pam:

Following is a list of questions/comments from Michael Eisenga's lawyer regarding the latest draft of the child support bill. For some reason my email won't let me italicize the questions/comments so I will instead begin that section with brackets.

Thanks,

Rick Braun
Office of Rep. Joel Kleefisch

[The following are On Page 4 there are two questions after line 9.

I believe you want child support based on income only so the answer to the first question is yes.

I think the answer to the second question is yes as well.

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With respect to s.767.59 (1f) (b) 5 (line 7 on page 11) why not put a period after s. 767.511 (1j) and delete the balance of that proposed revision?

On page 12, lines 9 and 10, the question is again raised whether even a agreement the parties that includes a minimum support order should be approved.

Why is section 30 non statutory? This means is won't be in the law books and may not have the effect you wish.]

Kahler, Pam

From: Kahler, Pam
Sent: Wednesday, January 09, 2013 1:48 PM
To: Braun, Rick
Subject: RE: Review of Draft Bill

That's fine. There's no rush. I just wanted to make sure we weren't each expecting something from the other one first!

-----Original Message-----

From: Braun, Rick
Sent: Wednesday, January 09, 2013 1:39 PM
To: Kahler, Pam
Subject: RE: Review of Draft Bill

Pam:

I sent Michael your last two questions on the Jan. 2 and haven't heard back from him. I'll send him another reminder.

Thanks,

Rick

-----Original Message-----

From: Kahler, Pam
Sent: Wednesday, January 09, 2013 1:17 PM
To: Braun, Rick
Subject: RE: Review of Draft Bill

Rick,

I'm waiting for a response to my email before I send out another draft. I just wanted to make sure you weren't waiting for me to draft another version first. If you are, however, I can do so on the basis of what I said in my email.

Pam

-----Original Message-----

From: Braun, Rick
Sent: Wednesday, December 26, 2012 1:20 PM
To: Kahler, Pam
Subject: FW: Review of Draft Bill

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0016/PS

PJK:sac:rs

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(in 1-23)

(R)

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1 AN ACT *to renumber* 767.531 (1), 767.531 (2) and 767.531 (3); *to renumber and*
2 *amend* 767.511 (1j) and 767.531 (intro.) (except 767.531 (title)); *to amend*
3 49.22 (9), 767.225 (1n) (b) 1., 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511
4 (1n), 767.513 (2), 767.55 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.59 (1c) (a)
5 (intro.), 767.59 (1c) (a) 1., 767.59 (1f) (b) (intro.), 767.59 (1f) (b) 4., 767.59 (1f)
6 (c) (intro.), 767.59 (2) (a), 767.59 (2) (b) and 767.85 (2); and *to create* 767.511
7 (1j) (b), 767.511 (1j) (c), 767.511 (1j) (d), 767.511 (1r), 767.59 (1c) (c), 767.59 (1f)
8 (b) 5. and 767.59 (2m) of the statutes; **relating to:** child support changes,
9 including prohibiting basing support on income over \$150,000 per year,
10 deducting the amount of health insurance premiums from the support amount,
11 prohibiting increasing support above the standard amount, prohibiting orders
12 that set minimum future support amounts, requiring a support revision if there

and

1 has been a substantial change in circumstances, and requiring the exercise of
2 rule-making authority

Analysis by the Legislative Reference Bureau

Under current law, in divorces, paternity actions, and other actions affecting the family in which there are minor children the court is required to order either or both parents to pay an amount that is reasonable or necessary to fulfill a duty to support a child. The court must generally determine child support payments by using the percentage standard set out in the Wisconsin Administrative Code (code) and established by the Department of Children and Families (DCF). The percentage standard is a percentage of the child support payer's monthly income available for support. The percentage that the child support payer must pay varies with the number of children to be supported. Under the percentage standard, a payer must pay 17 percent of his or her monthly income available for support for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Generally, the parent who has physical placement with a child for less time is ordered to pay child support to the other parent on the basis of the percentage standard.

In addition to the percentage standard, the code provides special methods that the court may, but is not required to, use for calculating child support in special situations, including for high-income payers. For high-income payers, child support may be determined by multiplying annual income available for support that is less than \$84,000 by the usual percentages of the percentage standard, income between \$84,000 and \$150,000 by a different schedule of percentages that are about 80 percent of the usual percentages, and income above \$150,000 by another schedule of percentages that are about 60 percent of the usual percentages. For example, for a payer with annual income available for support above \$150,000, child support for one child may be determined by multiplying the payer's monthly income under \$7,000 by 17 percent, multiplying the additional monthly income between \$7,000 and \$12,500 by 14 percent, multiplying the additional monthly income over \$12,500 by 10 percent, and adding together the amounts obtained.

The code provides that the court must determine a parent's monthly income that is available for child support by dividing by 12 the sum of the parent's gross annual income, or gross annual income modified for business expenses, the parent's annual imputed income based on earning capacity, and the parent's annual income imputed from assets. Under the code, the court may impute income to a payer if the court determines that the payer's income is less than his or her earning capacity or if the payer has unproductive assets or has diverted income into assets to avoid paying child support. For imputing income based on earning capacity, the court assesses the parent's education, training, previous work experience and income level, and the availability of work in or near the parent's community. Income imputation for unproductive assets involves multiplying the net value of the parent's assets by the current six-month treasury bill rate or another reasonable rate.

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill makes a few modifications to the way in which child support is determined. The bill provides that child support may be based only on a parent's actual income or imputed income based on earning capacity, as determined by the court. The bill provides that child support may not be based on any of a parent's assets and that it may not be based on any portion of a parent's annual gross income that exceeds \$150,000, annually adjusted in accordance with the consumer price index. The bill conforms the statutory provision that authorizes DCF to promulgate rules establishing the percentage standard with these changes.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's child support payments, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for health insurance premiums for the child for whom support is determined.

Under the bill, a court still may, upon a party's request, modify the amount of child support determined if the court finds that the amount is unfair to the child or either of the parties after considering the factors under current law. However, the court may modify the amount of child support it has determined in the manner provided in the statutes only by reducing that amount. The requirement that a court may only reduce the amount of support that it has determined in the manner provided in the statutes also applies to temporary support orders and to revisions of support orders.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill does not change this requirement; however, the bill also provides that, if the court does find that there has been a substantial change in circumstances, the court must revise the amount of child support under an existing order. In addition, the bill provides that the new requirements related to determining child support constitute a substantial change in circumstances that requires a court to revise an existing child support order that was based on the method of determining child support before the enactment of the bill *Insert A*

The bill makes a few other changes relating to support. Under current law, family support is an order that combines child support and maintenance (formerly called alimony) into a single support amount. The bill provides that a family support order may not include a child support amount that exceeds the amount of child support that would be determined otherwise in the manner provided in the statutes. The bill prohibits a court from including a provision in a support order that sets a minimum amount of child support that may be ordered at a future time if the support

order is revised, unless the provision is based on a written stipulation of the parties. The bill also provides that, in an action to revise an order with respect to the amount of child support, regardless of when the order was granted, if it includes a provision that sets a minimum amount of support that may be ordered at a future time, that provision is void and may not be given effect, unless it is based on a written stipulation of the parties.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 49.22 (9) of the statutes is amended to read:

2 49.22 (9) The department shall promulgate rules that provide a standard for
3 courts to use in determining a child support obligation based upon a percentage of
4 the gross income ~~and assets~~ of either or both parents. The rules shall provide for
5 consideration of the income of each parent and the amount of physical placement
6 with each parent in determining a child support obligation in cases in which a child
7 has substantial periods of physical placement with each parent. The rules may not
8 base any amount of child support on any portion of a parent's gross income that
9 exceeds \$150,000 per year.

****NOTE: Do you want to change the rules in this way? I have removed "assets" from what DCF may factor into the percentage standard to conform the rules to proposed s. 767.511 (1j) (c). Okay?

****NOTE: I have also changed *net* income of \$150,000 to *gross* income of \$150,000. This is because net income amount will be affected by any number of factors that are unique to each individual. Since the percentage standard is based on gross income, I think the income limit for determining support must be gross income, too. Okay? If \$150,000 is too low in terms of gross income, the amount can be raised.

10 SECTION 2. 767.225 (1n) (b) 1. of the statutes is amended to read:

11 767.225 (1n) (b) 1. If the court makes a temporary child support order that
12 deviates from the amount of support that would be required ~~by using the percentage~~
13 ~~standard established by the department~~ under s. 49.22 (9) 767.511 (1j), the court
14 shall comply with the requirements of s. 767.511 (1n). The court may make a

1 temporary child support order that deviates from the amount that would be required
2 under s. 767.511 (1j) by reducing, but not by increasing, that amount.

3 SECTION 3. 767.511 (1j) (title) of the statutes is amended to read:

4 767.511 (1j) (title) PERCENTAGE CALCULATION; PERCENTAGE STANDARD GENERALLY
5 REQUIRED.

6 SECTION 4. 767.511 (1j) of the statutes is renumbered 767.511 (1j) (intro.) and
7 amended to read:

8 767.511 (1j) (intro.) Except as provided in sub. (1m), the court shall determine
9 child support payments by using in the following manner:

10 (a) Except as otherwise provided in this subsection, the court shall use the
11 percentage standard established by the department under s. 49.22 (9).

12 SECTION 5. 767.511 (1j) (b) of the statutes is created to read:

13 767.511 (1j) (b) The court may not order any amount of child support based on
14 any portion of a parent's gross income that exceeds \$150,000 per year. This income
15 amount shall be adjusted annually, beginning in 2015, to reflect changes in the
16 consumer price index for all urban consumers, U.S. city average, as determined by
17 the U.S. department of labor.

****NOTE: I have changed "net" income of \$150,000 to "gross" income of \$150,000.
See my ****NOTE after s. 49.22 (9).

18 SECTION 6. 767.511 (1j) (c) of the statutes is created to read:

19 767.511 (1j) (c) The court shall base child support payments only on a parent's
20 actual income or on imputed income based on earning capacity, as determined by the
21 court, and may not order any amount of child support based on the value of any of
22 a parent's assets.

23 SECTION 7. 767.511 (1j) (d) of the statutes is created to read:

1 767.511 (1j) (d) When the court calculates the amount of a parent's child
2 support payments, unless the parties agree otherwise in writing or orally in open
3 court, the court shall reduce the amount determined under pars. (a) to (c) by the
4 amount per month that the parent currently pays or is ordered to pay for health
5 insurance premiums attributable to the child for whom the support is being
6 determined.

7 **SECTION 8.** 767.511 (1m) (intro.) of the statutes is amended to read:

8 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
9 party, the court may modify, by reducing but not by increasing, the amount of child
10 support payments determined under sub. (1j) if, after considering the following
11 factors, the court finds by the greater weight of the credible evidence that ~~use of the~~
12 ~~percentage standard~~ the amount of child support determined under sub. (1j) is unfair
13 to the child or to any of the parties:

14 **SECTION 9.** 767.511 (1n) of the statutes is amended to read:

15 767.511 (1n) DEVIATION FROM STANDARD; RECORD. If the court finds under sub.
16 (1m) that ~~use of the percentage standard~~ the amount of child support determined
17 under sub. (1j) is unfair to the child or the requesting party, the court shall state in
18 writing or on the record the amount of support that would be required ~~by using the~~
19 ~~percentage standard~~ under sub. (1j), the amount by which the court's order ~~deviates~~
20 is reduced from that amount, its reasons for finding that ~~use of the percentage~~
21 ~~standard~~ the amount of child support determined under sub. (1j) is unfair to the child
22 or the party, its reasons for the amount of the ~~modification~~ reduction, and the basis
23 for the ~~modification~~ reduction.

24 **SECTION 10.** 767.511 (1r) of the statutes is created to read:

1 767.511 (1r) MINIMUM REVISION AMOUNTS PROHIBITED. Unless based on a written
2 stipulation of the parties, the court may not grant a child support order that sets a
3 minimum amount of support that may be ordered in the future in the event that the
4 child support order is revised under s. 767.59 or a substantially similar law of
5 another state.

6 SECTION 11. 767.513 (2) of the statutes is amended to read:

7 767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support
8 for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (d), the court shall
9 specifically assign responsibility for and direct the manner of payment of the child's
10 health care expenses. In assigning responsibility for a child's health care expenses,
11 the court shall consider whether a child is covered under a parent's health insurance
12 policy or plan at the time the court approves a stipulation for child support under s.
13 767.34, enters a judgment of annulment, divorce, or legal separation, or enters an
14 order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or
15 (j), 767.501, or 767.805 (3), the availability of health insurance to each parent
16 through an employer or other organization, the extent of coverage available to a
17 child, and the costs to the parent for the coverage of the child. A parent may be
18 required to initiate or continue health care insurance coverage for a child under this
19 section. If a parent is required to do so, he or she shall provide copies of necessary
20 program or policy identification to the custodial parent and is liable for any health
21 care costs for which he or she receives direct payment from an insurer. This section
22 shall not be construed to limit the authority of the court to enter or modify support
23 orders containing provisions for payment of medical expenses, medical costs, or
24 insurance premiums that are in addition to and not inconsistent with this section.

1 **SECTION 12.** 767.531 (intro.) (except 767.531 (title)) of the statutes is
2 renumbered 767.531 (1m) and amended to read:

3 767.531 (1m) The court may make a financial order designated "family
4 support" as a substitute for child support orders under s. 767.511 and maintenance
5 payment orders under s. 767.56. As part of a family support order, the court may not
6 order a party to pay an amount of child support that exceeds the child support
7 payments that the party would be required to pay under s. 767.511 (1j).

8 (2m) A party ordered to pay family support under this section shall pay simple
9 interest at the rate of 1% per month on any amount in arrears that is equal to or
10 greater than the amount of child support due in one month. If the party no longer
11 has a current obligation to pay child support, interest at the rate of 1% per month
12 shall accrue on the total amount of child support in arrears, if any. Interest under
13 this section is in lieu of interest computed under s. 807.01 (4), 814.04 (4), or 815.05
14 (8) and is paid to the department or its designee under s. 767.57.

15 (3m) Except as provided in s. 767.57 (1m), the department or its designee shall
16 apply all payments received for family support as follows:

17 **SECTION 13.** 767.531 (1) of the statutes is renumbered 767.531 (3m) (a).

18 **SECTION 14.** 767.531 (2) of the statutes is renumbered 767.531 (3m) (b).

19 **SECTION 15.** 767.531 (3) of the statutes is renumbered 767.531 (3m) (c).

20 **SECTION 16.** 767.55 (2) (c) of the statutes is amended to read:

21 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
22 parent to pay child support equal to the amount determined ~~by applying the~~
23 ~~percentage standard established under s. 49.22 (9)~~ 767.511 (1j) or equal to the
24 amount of child support that the parent was ordered to pay in the most recent
25 determination of support under this chapter. The child support obligation ordered

1 under this paragraph continues until the parent makes timely payment in full for
2 3 consecutive months or until the person participates in the program under s. 49.36
3 for 16 weeks, whichever occurs first. The court shall provide in its order that the
4 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
5 after the obligation to make payments ordered under this paragraph ceases.

6 **SECTION 17.** 767.553 (1) (a) of the statutes is amended to read:

7 767.553 (1) (a) An order for child or family support under this chapter may
8 provide for an annual adjustment in the amount to be paid based on a change in the
9 payer's income if the amount of child or family support is expressed in the order as
10 a fixed sum and based on the percentage standard established by the department
11 determined under s. ~~49.22 (9)~~ 767.511 (1j). No adjustment may be made under this
12 section unless the order provides for the adjustment.

13 **SECTION 18.** 767.553 (1) (b) of the statutes is amended to read:

14 767.553 (1) (b) An adjustment under this section may not be made more than
15 once in a year and shall be determined ~~on the basis of the percentage standard~~
16 established by the department under s. ~~49.22 (9)~~ 767.511 (1j).

17 **SECTION 19.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

18 767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either
19 of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,
20 or a county child support agency under s. 59.53 (5) if an assignment has been made
21 under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.19 (4) (h), or 49.45 (19) or if either
22 party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.
23 49, a court may, except as provided in ~~par.~~ pars. (b) and (c), do any of the following:

24 **SECTION 20.** 767.59 (1c) (a) 1. of the statutes is amended to read:

1 767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the
2 amount and payment of maintenance or child support and the appropriation and
3 payment of the principal and income of property held in trust. The court may revise
4 and alter a child support order regardless of whether the amount of support was
5 determined by the court, by court approval of a stipulation of the parties, or through
6 arbitration.

7 **SECTION 21.** 767.59 (1c) (c) of the statutes is created to read:

8 767.59 (1c) (c) In an action under this section to revise a judgment or order as
9 to the amount of child or family support, the court must revise the judgment or order
10 as to the amount of child or family support if the court finds a substantial change in
11 circumstances.

12 **SECTION 22.** 767.59 (1f) (b) (intro.) of the statutes is amended to read:

13 767.59 (1f) (b) (intro.) In an action under this section to revise a judgment or
14 order with respect to the amount of child support, any of the following constitutes a
15 rebuttable presumption of a substantial change in circumstances sufficient to justify
16 require a revision of the judgment or order:

17 **SECTION 23.** 767.59 (1f) (b) 4. of the statutes is amended to read:

18 767.59 (1f) (b) 4. A If the action is one to revise a judgment or order with respect
19 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
20 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), a difference between
21 the amount of child support ordered by the court to be paid by the payer and the
22 amount that the payer would have been required to pay based on the percentage
23 standard established by the department under s. 49.22 (9) if the court did not use the
24 percentage standard in determining the child support payments and did not provide

1 the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or
2 767.511 (1n), whichever is appropriate.

3 **SECTION 24.** 767.59 (1f) (b) 5. of the statutes is created to read:

4 767.59 (1f) (b) 5. If the action is one to revise a judgment or order with respect
5 to child support or family support ordered under this chapter, a difference between
6 the amount of child support ordered by the court to be paid by the payer and the
7 amount that the payer would have been required to pay under s. 767.511 (1j) if the
8 court did not determine child support payments in the manner provided under s.
9 767.511 (1j) and did not provide the information required under s. 767.511 (1n).

10 **SECTION 25.** 767.59 (1f) (c) (intro.) of the statutes is amended to read:

11 767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or
12 order with respect to an amount of child support, any of the following may constitute
13 a substantial change of in circumstances sufficient to justify require revision of the
14 judgment or order:

15 **SECTION 26.** 767.59 (2) (a) of the statutes is amended to read:

16 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment
17 or order with respect to child support payments, it shall do so by using the percentage
18 standard established by the department in the manner provided under s. 49.22 (9)
19 767.511 (1j).

20 **SECTION 27.** 767.59 (2) (b) of the statutes is amended to read:

21 767.59 (2) (b) Upon request by a party, the court may modify, by reducing but
22 not by increasing, the amount of revised child support payments determined under
23 par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by
24 the greater weight of the credible evidence, that the use of the percentage standard

Insert 11-9

1 amount of child support determined in the manner provided under s. 767.511 (1j) is
2 unfair to the child or to any of the parties.

3 **SECTION 28.** 767.59 (2m) of the statutes is created to read:

4 **767.59 (2m) MINIMUMS ARE VOID.** In an action under this section to revise a
5 judgment or order with respect to the amount of child support, any provision in the
6 judgment or order that sets a minimum amount of child support that may be ordered
7 in the future in the event that the child support order is revised under this section
8 or a substantially similar law of another state is void and may not be given effect by

9 the court, regardless of when the judgment or order was granted, unless the
10 provision was based on a written stipulation of the parties.

****NOTE: I have modified this provision as you requested so that a provision in an order entered before the effective date of the act that sets a minimum future child support amount is void and may not be given effect. I think that this may present a separation-of-powers problem, however. It is fine for the legislature to say that such orders may not be granted any longer; however, the legislature may be overstepping its bounds and impermissibly interfering with another branch of government when it says that a court order that was perfectly legal when granted is now void and may not be given effect. It would be preferable to make any such order void and unenforceable if granted after the effective date, which is the date on which they were first prohibited.

11 **SECTION 29.** 767.85 (2) of the statutes is amended to read:

12 **767.85 (2) CONSIDERATIONS.** Before making any temporary order under sub. (1),
13 the court shall consider those factors that the court is required to consider when
14 granting a final judgment on the same subject matter. If the court makes a
15 temporary child support order that deviates from the amount of support that would
16 be required by ~~using the percentage standard established by the department under~~
17 ~~s. 49.22 (9) 767.511 (1j)~~, the court shall comply with the requirements of s. 767.511
18 (1n). The court may make a temporary child support order that deviates from the
19 amount that would be required under s. 767.511 (1j) by reducing, but not by
20 increasing, that amount.

SECTION 30. Nonstatutory provisions.

(1) SUBSTANTIAL CHANGE IN CIRCUMSTANCES. Notwithstanding section 767.59 (1f) (b) 5. of the statutes, as created by this act, the treatment of sections 49.22 (9), 767.511 (1m) (intro.) and (1n), 767.531 (intro.), 767.59 (1c) (a) (intro.) and 1. and (c) and (2) (a) and (b) of the statutes by this act, the renumbering and amendment of section 767.511 (1j) of the statutes by this act, and the creation of section 767.511 (1j) (b), (c), and (d) of the statutes by this act constitute a substantial change in circumstances requiring a revision under section 767.59 of the statutes, as affected by this act, with respect to child or family support, of a judgment or order that was entered before the effective date of this subsection.

SECTION 31. Initial applicability.

(1) GENERAL. This act first applies to child or family support orders, including temporary orders and orders revising judgments or orders previously granted, that are granted on the effective date of this subsection.

(END)

**2013-2014 DRAFTING INSERT
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LEGISLATIVE REFERENCE BUREAU**

LRB-0016/lins
PJK:.....

INSERT A

not, in an action to revise the amount of child or family support under an existing order, if the amount under the existing order is different from the amount that would be ordered using the new requirements and the court did not use the new requirements and did not specify the reasons why they were not used, the court must find a substantial change in circumstances that requires the court to revise the existing child support order²

(END OF INSERT A)

INSERT 11-9

1 **SECTION 1.** 767.59 (1f) (bm)[✓] of the statutes is created to read:
2 767.59 (1f) (bm) In an action under this section to revise a judgment or order
3 with respect to an amount of child or family support ordered under this chapter, the
4 court shall find a substantial change in circumstances sufficient to require revision
5 of the judgment or order if the amount of child support ordered by the court to be paid
6 by the payer is different from the amount that the payer would have been required
7 to pay under s. 767.511 (1j)[✓] and the court did not determine child support payments
8 in the manner provided under s. 767.511 (1j)[✓] and did not provide the information
9 required under s. 767.511 (1n)[✓].

(END OF INSERT 11-9)

The first is to make is very clear that when the annual adjustment is made it be to an amount not to exceed the child support standards(another way of attacking floors). I think this addresses the problem:

767.553(1)(c) No adjustment shall create a child support obligation that exceeds the amount prescribed by 767.511 (1j), notwithstanding any contrary provision in the child support order.

It is also not clear to me that a payer paying more than the new amount prescribed in the bill is entitled to an immediate revision of the child support obligation as a result of the passage of the bill. I think this will address the issue:

767.59(1f)(b)5. A difference between the amount of child support ordered by the Court to be paid by the payer and the amount the payer would, at the time of hearing the motion to revise, be required to pay pursuant to s. 767.511 (1j).

I will note it will be odd that 767.511 (1m) includes a number of factors that justify an upward deviation of support. Since the court is prohibited from implementing an upward deviation, I thought about suggesting the removal of some of these factors. I am not making the suggestion because you still have the prohibition against upward adjustments.

You asked about the language of 767.553 for annual adjustments. It means that automatic adjustments occur only if the judgment provides for them. If the judgment does not, a motion to revise needs to be brought.